

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0264

**Sales and Use Tax
For Tax Years 1998 through 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax—Imposition

Authority: IC 6-2.5-2-1; IC 6-2.5-3-2(a); IC 6-2.5-4-1; IC 6-8.1-5-1(b)

Taxpayer protests the assessment of sales and use tax.

II. Tax Administration—Abatement of Penalty

Authority: IC 6-8.1-10-2.1(d)
45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is the sole proprietor of a used vehicle business. Taxpayer acquires most of the vehicles that he sells from auto auctions in Indiana and Florida per his customers' specifications. Taxpayer was audited for tax years ending 1998 and 1999. Pursuant to the audit, a review of the "Summary by Short Dealer ID Number" for the year ending 1998 (a document acquired from the Indiana Bureau of Motor Vehicles) revealed that taxpayer failed to report and remit the gross retail tax on the sale of a vehicle. The audit further revealed that taxpayer also failed to pay sales tax on the purchase of a variety of miscellaneous items including, a travel trailer used as taxpayer's office, stone for the parking lot, and a market report and a market guide subscription. Based upon taxpayer's errors, the Department assessed additional sales and use tax liability. In addition, the Department imposed a 10% negligence penalty.

I. Sales/Use Tax—Imposition

DISCUSSION

Taxpayer first argues that the auditor erred in determining that he failed to report and remit sales tax on the sale of a vehicle. At hearing, taxpayer was unable to provide evidence that sales tax was collected at the time of the sale.

Pursuant to IC 6-2.5-2-1, a sales tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property.

Here, the auditor determined that taxpayer made a taxable sale in Indiana but failed to remit the full amount of sales tax due to the Department of Revenue. "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b). Taxpayer has submitted no evidence indicating that the sales tax assessment was wrong. Therefore, taxpayer is liable for the full amount of the sales tax assessed as a result of the audit report.

Taxpayer also protests the Department's assessment of use tax on the travel trailer used as taxpayer's office, the stone for the parking lot, and the subscriptions for the market report and the used car market guide. "An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC 6-2.5-3-2(a).

The above-mentioned items are all tangible personal property for use in taxpayer's used vehicle business. No sales tax was collected and remitted for these items at the time of purchase. Therefore, under IC 6-2.5-3-2(a), taxpayer should have self-assessed and remitted use tax on these items.

FINDING

Taxpayer's protest is denied.

II. Tax Administration— Abatement of Penalty

DISCUSSION

Taxpayer protests the imposition of a ten percent (10%) negligence penalty. IC 6-8.1-10-2.1(d) states that if a person subject to the negligence penalty imposed under said section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the Department shall waive the penalty. 45 IAC 15-11-2 defines negligence as the failure to use reasonable care, caution or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or Department regulations.

In order to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. 45 IAC 15-11-2. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed" 45 IAC 15-11-2(c). In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits. *Id.*

Taxpayer has failed to set forth a basis for establishing that he exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Given the totality of the circumstances, waiver of the penalty is inappropriate in this instance.

FINDING

Taxpayer's protest is denied.

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